

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

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Re: Artisans' Bank v. Seaford IR, LLC, et al.
C.A. No. S10C-01-009 RFS

Upon Plaintiff's Motion for Judgment on the Pleadings. Denied.

Submitted: June 4, 2010
Decided: June 21, 2010

Dear Counsel:

Plaintiff Artisans' Bank ("Artisans' ") has filed a Motion for Judgment on the Pleadings, seeking a judgment against Defendant Albert P. Croll, III ("Croll"). Croll allegedly guaranteed the financial obligations of Defendant Seaford IR, LLC, under its loan agreement with Artisans'. Based on the pleadings before the Court, and the complex nature of the case, the Court finds that Artisans' has not shown that there are no material

issues of fact in dispute. The motion is therefore denied.

Standard of Review. Pursuant to Super. Ct. Civ. R. 12(c), a party may move for judgment on the pleadings after the pleadings are closed but within such time as not to delay the trial. The motion will be granted only when no material issues of fact exist and the movant is entitled to judgment as a matter of law.¹ **Facts and posture.** This case stems from a construction loan made by Artisans’ for the purchase of 4.16 acres of real property in Seaford, Delaware. The loan was executed by Defendant Seaford IR, LLC (“Seaford”), against whom a default judgment has been entered. There were four guarantors for the loan, and default judgment has been entered against three of them. Croll remains.

The Complaint alleges the following facts. On April 17, 2006, Seaford executed to Artisans’ a note in the original principal amount of \$950,000 (“Note I”). The note matured on April 17, 2009, and has not been paid. Artisans’ seeks to recover the principal amount of the loan, which now totals \$822,843.09; past due interest through January 5, 2010 in the amount of \$31,461.72; late fees in the amount of \$41,451.44; interest on the outstanding principal balance calculated at the *per diem* rate of \$97.14, beginning January 6, 2010 until Note I is paid in full; and attorneys fees and costs in the amount of \$42,715.24. It is uncontested that Croll signed a Guaranty Agreement for the loan on April 17, 2006.

¹*Gonzales v. Apartment Communities Corp.*, 2006 WL 2905724, at *1 (Del. Super.).

The Complaint also alleges that on April 17, 2006, Seaford executed and delivered to Artisans' a note in the original principal amount of \$400,000 ("Note II"). The note matured on October 17, 2007, and has not been paid. It is alleged that Croll is indebted on this note as well, under his guaranty agreement, dated April 17, 2006. Artisans' seeks to recover past due interest through January 5, 2010 in the amount of \$370.80; late fees in the amount of \$51.75; attorneys' fees and costs in the amount of \$20.00.

The Complaint alleges that Croll is indebted to Artisans' on both Note I and Note II under the Guaranty Agreement executed on April 17, 2006.

On March 8, 2010, Croll filed an Answer and Counterclaim and, on March 31, 2010, served discovery requests on Artisans'. Artisans' has filed objections to Croll's requests for productions and first set of interrogatories. Thus, discovery is incomplete.

In its Motion for Judgment on the Pleadings, Artisans' cites to certain clauses in the Guaranty Agreement as support for its claim for full recovery. Artisans' argues that under the Guaranty, Croll's "liability is unlimited and [his] obligations are continuing." Artisans' argues that the Guaranty applies to "all debts, liabilities and obligations of every nature or form, now existing or hereafter acquired" and to "future advances, loans or transactions." The Guaranty allegedly authorizes Artisans' "without notice or demand. . . to make one or more additional secured or unsecured loans. . . or otherwise to extend additional credit to Borrower." Artisans' argues that the Guarantor waives any notice of "the creation of new or additional loans or obligations."

Croll argues that in order to be entitled to specific performance of the Guaranty, Artisans' must have substantially performed under the contract and that it has failed to do so.² Croll asserts that Artisans' committed material breaches and bad faith lending practices in the following ways: (1) Artisans' failed to obtain construction plans, conduct inspections, review budgets, or obtain an appraisal for the property; (2) Artisans' disbursed funds in excess of the loan to value ratio; (3) Artisans' over advanced the loans by more than \$380,000; (4) Artisans' disbursed loan proceeds for improper uses, such as the buy-out of corporate interests; (5) Artisans' failed to abide by the release requirements and short sales without notice to Croll; and (6) Artisans' failed to exercise good faith in its lending practices in disbursing loan funds.

The standard for granting a motion for judgment on the pleadings is stringent. To prevail, the moving party must show that there are no issues of material fact in existence.³ The allegations raised by Croll attest to the existence of many issues of material fact pertaining to complex conduct and transactions. In order for the issues to be resolved, a complete record must be established, starting with discovery.⁴ Resolution of the issues

²*AQSR India Private, Ltd. v. Bureau Veritas Holdings, Inc.*, 2009 Del. Ch. LEXIS 105, at *2 (June 16, 2009); *SLMSoft.com, Inc. v. Cross Country Bank*, 2003 Del. Super. LEXIS 112, at *52 (April 2, 2003).

³*Gonzales v. Apartment Communities Corp.*, 2006 WL 2905724 (Del. Super.).

⁴ As this Court has previously observed, all parties to a contract may rely on the covenant of good faith and fair dealing, and a guarantor on a loan can assert the violation of the covenant of good faith that was implied in his personal guarantee as a defense to a breach of contract claim. *Daystar Construction Mgmt., Inc. v. Mitchell*, 2006 WL 2053649 (Del. Super.).

awaits another day. The Motion for Judgment on the Pleadings is **DENIED**.

The same conclusion applies to Artisans' motion to dismiss Croll's counterclaims for failure to state a claim upon which relief can be granted. The facts are not in, and that motion is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary